IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26/03/2004

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THE HON'BLE MR. JUSTICE P.K. MISRA

WRIT PETITION NO.7381 OF 1997

1. North Coimbatore FCI Workers
Labour Contract Co-operative
Society Limited,
rep. by its President,
Tatabad, Coimbator 641 012.

2. Kovai Mavatta Baram Thookkuvoor
Pothu Thozhilalar Sangam,
(Regn.No.774/CBE)
rep. by its Secretary,
99, Rangan Street,
Coimbatiore 641 009. .. Petitioners

-Vs-

1. Union of India,
rep. by the Secretary,
Department of Labour & Employment,
New Delhi.

2. Food Corporation of India Ltd.,
rep. by Senior Regional Manager,
Regional Office,
5/54, Greams Road,
Madras 600 006. .. Respondents

Petition filed under Article 226 of the Constitution of India for the issuance of Writ of Mandamus as stated therein.

For Petitioners : Mr. Chandrasekaran for
M/s. Row & Reddy

For Respondent-1 : Mr.J. Madanagopal Rao,
SCGSC

Respondent-2 : Mr.A.S. Thambusamy

:J U D G M E N T

The present writ petition has been filed by North Coimbatore FCI Workers Labour Contract Co-operative Society Limited and Kovai Mavatta Baram Thookkuvoor Pothu Thozhilalar Sangam.

2. It is claimed in the writ petition that the workers represented through the present petitioners were employed through contractors under the second respondent. Subsequently, the workers formed a Cooperative Society and the work was being allotted to such Co-operative Society. In 1994, the contract was terminated and in 1995 tender was called for. At that stage, W.P.No.5950 of 1995 was filed by the petitioners challenging the advertisement dated 14.5.1995. Even though the writ petition was entertained, learned single Judge did not pass any interim order. The petitioners filed W.A.No.654 of 1995. The Division Bench passed an order of status quo on 6.6.1995 and by virtue of such order, the Co-operative Society was allowed to render the work and accordingly the workmen forming the Co-operative Society continued as such. Thereafter, the writ petition and the writ appeal were withdrawn. However, subsequently in May, 1997, a fresh notification inviting tender was issued and the present writ petition has been filed with a prayer for a direction to the first respondent to take steps under Section 10(1) of the Contract Labour Abolition & Regulation Act, 1970 and for a direction to absorb all the employees from the date of abolition. An order of status quo has been passed, which is continuing.

3. It is obvious that such a writ petition has been filed keeping in view the decisions of the Supreme Court reported in 1995 (5) SCC P.2 7 (GUJARAT ELECTRICITY BOARD v. HMS & OTHERS) and AIR 1997 SC 645 (AIR INDIA STATUTORY CORPORATION, ETC., v. UNITED LABOUR UNION AND OTHERS, ETC.,).

4. Learned counsel for the petitioners has submitted that in view of the subsequent decisions reported in 2001(7) SCC 1 (STEEL AUTHORITY OF INDIA LTD., v. NATIONAL UNION WATWERFRONT WORKERS) and 2002(3) SCC 433 (NITINKUMAR NATHALAL JOSHI v. ONGC LTD.,), prayer for abolition of the labour contract system and direction regarding absorption may not be proper. In the changed circumstances, learned counsel for the petitioners prays that the petitioners may be permitted to invoke appropriate jurisdiction under the Industrial Disputes Act. Learned counsel for the petitioners has further submitted that by virtue of the interim order passed by this Court, the Co-operative Society has been entrusted with the work and such arrangement may be allowed to continue until the matter is finalised by the appropriate Industrial Forum.

5. Learned counsel appearing for the respondents has submitted that in view of the later decision of the Supreme Court over-ruling the decision reported in 1997 SC 645 (cited supra), the question of giving a direction for absorption does not arise. Learned counsel for the respondents has further submitted that the question as to whether there is any industrial dispute or not is a matter of discretion of the appropriate Government, namely the Union of India and such matter has to be left to the Central Government. It is further submitted that even assuming that any dispute is referred to the Industrial Forum, Food Corporation of India should be allowed to carry on the work through any contractor on the basis of tender.

6. In the present case, the Union of India has been impleaded as respondent No.1. The matter has remained pending from 1997. Having regard to the facts and circumstances of the case and keeping in view the various decisions of the Supreme Court referred to above, I feel interest of justice would be served by directing the first respondent to frame and refer the disputes between the petitioners and the respondent No.2 to the appropriate Industrial Forum within a period of four weeks from the date of receipt of a copy of this order. Thereafter, the Industrial Forum shall proceed to adjudicate the matter in accordance with law, as expeditiously as possible, preferably within a period of six months, from the date of receipt of the order of Reference. Having regard to the fact that order of status quo has continued from 1997, the respondent No.2 is directed to continue with the same arrangement until the matter is decided by the Industrial Forum.

7. Subject to the aforesaid directions, the writ petition is disposed of. No costs.

Index : Yes
Internet: Yes

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To

1. Union of India,
rep. by the Secretary,
Department of Labour & Employment,
New Delhi.

2. Food Corporation of India Ltd.,
rep. by Senior Regional Manager,
Regional Office,
5/54, Greams Road,
Madras 600 006.